

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

TRANSCRIPT OF CHANGE OF PLEA
BEFORE THE HONORABLE PAUL J. BARBADORO

Appearances:

For the Government: John P. Kacavas, USA
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U.S. Attorney's Office
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For the Defendant: Lawrence A. Vogelman, Esq.
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For Probation: Jodi Gauvin

Court Reporter: Diane M. Churas, LCR, CRR
Official Court Reporter
U.S. District Court
55 Pleasant Street
Concord, NH 03301
(603) 225-1442

1 BEFORE THE COURT

2 THE CLERK: Court has before it for
3 consideration a change of plea hearing in Criminal Case
4 No. 13-cr-142-01-PB, United States of America versus
5 Jonathon Irish.

6 THE COURT: All right. Mr. Irish, I
7 understand you want to plead guilty to Counts 1 and 2 of
8 the indictment. Is that right?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: All right. I'm going to ask you
11 some questions and you need to speak your answers
12 because we are making a recording of the proceeding.
13 You also need to respond truthfully so I will direct the
14 deputy clerk to place you under oath now.

15 (Defendant sworn.)

16 THE COURT: You can be seated and remain
17 seated throughout the proceeding.

18 So if you don't understand something I'm
19 saying to you, interrupt me and ask me to explain it.
20 Do you understand?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: So let's start right off the bat
23 with the most important thing, and that is, you have a
24 right to have a jury trial on these charges. No one can
25 take that right away from you. No one can make you give

1 up that right. The prosecutor can't, the defense lawyer
2 can't, I can't. Do you understand? That's totally up
3 to you. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And do you wish to give up your
6 right to a jury trial and plead guilty to these charges?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Okay. And there's a description
9 of facts in the plea agreement. Are you prepared to
10 admit that those facts are true?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Okay. So let's first establish
13 some basic things, and I ask these of everybody. Don't
14 feel insulted in any way. It's just standard questions
15 I have to ask. Do you have any difficulty reading?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: I graduated high school.

19 THE COURT: And are you taking any medicines
20 at all today?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Are you under the influence of
23 drugs or alcohol?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: So I know you have had a history

1 of some mental illness and I want to just review some of
2 that with you now. What's your understanding of the
3 diagnoses that you've had in the past?

4 THE DEFENDANT: In the past I've had quite a
5 few misdiagnoses that were actually throughout this case
6 per Dr. Damesa. There were only two diagnoses that were
7 found to be current and to be factual.

8 THE COURT: Okay. And what are those?

9 THE DEFENDANT: Post-traumatic stress disorder
10 and antisocial personality and anxiety disorder.

11 THE COURT: So let me focus on the PTSD and
12 the anxiety disorder. Those can produce some pretty
13 upsetting symptoms in a person, and I want to know today
14 as you sit here today, do you feel that you are able to
15 make decisions on your own behalf?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you feel that your mental
18 illness is in any way interfering with that, such as
19 maybe like I might be having too much anxiety and I
20 can't make a decision?

21 THE DEFENDANT: No, sir, I don't believe so.

22 THE COURT: Okay. So you feel that you are
23 rational, competent, capable to make a decision here.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Okay. And I recognize that you do

1 have these diagnoses of PTSD and anxiety, but I don't
2 see anything in your interactions with me today that
3 would cause me to question your own judgment about that
4 particular point.

5 So as I mentioned, you have a right to have a
6 trial on this charge, and, as you know, it's not up to
7 you to prove your innocence. It would be up to the
8 prosecutor to prove your guilt beyond a reasonable
9 doubt. You wouldn't have to prove anything. But to
10 prove your guilt the prosecutor would have to prove
11 certain things. They're called elements of the offense
12 and they're described in the plea agreement that you
13 have signed here.

14 So there are two charges. The first charge is
15 aiding and abetting the making of a material false
16 statement. The second charge is making a materially
17 false statement to a federal agent in violation of 18
18 USC, Section 1001.

19 The aiding and abetting charge has the
20 following elements. The first thing that the prosecutor
21 would have to prove is that an individual knowingly made
22 a false statement as charged in the indictment. Second,
23 he would have to prove that the individual made the
24 false statement -- excuse me, at the time the individual
25 made the false statement, the individual was trying to

1 purchase a firearm from a federally licensed firearm
2 dealer. Third, that that statement was intended to or
3 likely to deceive the licensed dealer about a fact
4 material to the lawfulness of the sale. And, fourth,
5 that you consciously shared the individual's knowledge
6 of the false statement, intended to help that
7 individual, and took part in the endeavor seeking to
8 make it succeed. So they would have to prove each of
9 those things for you to be guilty of that charge. Do
10 you understand?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: The 1001 charge has the following
13 elements. First, that you made a statement to a federal
14 agent; second, that the statement was false; third, that
15 it was material; fourth, that you made the false
16 statement knowingly and willfully; and, fifth, that the
17 statement pertained to an activity within the
18 jurisdiction of a federal agency. Those are the things
19 that the prosecutor would have to prove in order for you
20 to be found guilty of the 1001 charge. Do you
21 understand?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Let me just establish. There is a
24 written plea agreement in this case and you have signed
25 it. Have you read that agreement?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And have you had a chance to talk
3 to your lawyer about it?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you feel you understand it?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Also, the charges contained in the
8 indictment, there are two counts that you are being
9 tried on. Did you have a chance to read those charges?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And did you talk to your lawyer
12 about them?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And do you feel you understand
15 them?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: So in the plea agreement that you
18 signed, Section 3 called "offense conduct" has a brief
19 statement of the evidence the government says it would
20 produce against you. Is there anything in that
21 statement that you think is wrong?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Are you pleading guilty to both of
24 these charges because you, in fact, are guilty of the
25 charges?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: So the maximum possible term that
3 you face here, up to ten years of imprisonment on Count
4 and five years on Count 2, a maximum fine of up to
5 \$250,000 on each count, a term of supervised release of
6 not less than one year and not more than three years.
7 If you violate supervised release, you could be sent
8 back to prison. You could be required to make
9 restitution. You will have to pay a \$100 special
10 assessment for each count, totaling \$200. Those are the
11 maximum penalties. Do you understand?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Have you talked to your lawyer
14 about how the Sentencing Guidelines may apply in this
15 case?

16 THE DEFENDANT: Yes, your Honor, I believe so.

17 THE COURT: So when I sentence you, I'm going
18 to use those guidelines to determine something called a
19 guideline sentencing range. That's a range of months.
20 But then I treat the guidelines as advisory. I don't
21 have to follow them. I can sentence you within that
22 range or I could sentence you above that range or I
23 could sentence you below that range. Do you understand?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: You've entered into a plea

1 agreement with the prosecutor. Everything you agree to
2 do in that plea agreement you have to do. You're bound
3 by that. Everything the prosecutor agreed to do, he's
4 bound by that. For the most part I'm not bound by
5 what's in the plea agreement. I get to sentence you the
6 way I think you should be sentenced, but in this case
7 there is an agreement that you've entered into with the
8 prosecutor that is very important that is binding on me
9 in a limited sense.

10 So in Section 6 it usually is -- let me check.

11 MR. KACAVAS: It is, your Honor.

12 THE COURT: Section 6 of the plea agreement,
13 there's an agreement that's entered into pursuant to
14 Rule 11(c)(1)(C) and that agreement has the following
15 terms:

16 The United States agrees that it will not seek
17 charges against you based upon actions set forth in the
18 dismissed counts, Count 3, Count 4, and Count 5. And
19 that stipulation doesn't require you to waive any
20 defenses you may have to those charges.

21 The agreement also is that you should be
22 sentenced to a term of imprisonment of 18 months
23 followed by a term of supervised release of three years,
24 and that stipulation is intended to be binding pursuant
25 to Rule 11(c)(1)(C).

1 So what is meant by binding is this. I will
2 wait until the sentencing hearing. If I find that I can
3 accept that agreement, I will just go ahead and sentence
4 you to that amount. If for some reason I can't, either
5 I think it's too high or too low or whatever, I will
6 stop the proceeding and tell you I can't do that. If I
7 reach that decision, I will tell you here's what I would
8 do. You can either take this different sentence or you
9 can go back and have your not guilty plea reinstated.

10 Do you understand?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: But that will be the only reason
13 you will be allowed to withdraw your guilty plea if I
14 accept it is if I can't give you the 18-month sentence.
15 Do you understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Okay. Now, by pleading guilty
18 you're giving up certain rights. I want to make sure
19 you understand those rights. So you have a right to a
20 jury trial. That would be 12 people. All 12 people
21 would have to find you guilty beyond a reasonable doubt.
22 You could be represented by an attorney at no cost to
23 you. You could bring witnesses into court and have them
24 testify for you. You could testify if you wanted to.
25 If you wanted to remain silent, you could remain silent

1 and I would tell the jury they couldn't hold your
2 silence against you. You could be present in court
3 throughout the proceeding, and you could have your
4 lawyer cross-examine any witnesses who testify against
5 you.

6 By pleading guilty you're giving up all of
7 these rights. If I accept your guilty plea there won't
8 be a trial in this case. The only thing that will be
9 left is for me to sentence you, and I will determine any
10 facts that are necessary to sentence you. Do you
11 understand?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: You are also giving up your right
14 to appeal your conviction and sentence or to challenge
15 it in a collateral review proceeding which is any kind
16 of post-appeal challenge, appeal, Section 2255 motions,
17 habeas corpus, things like that. There are some limited
18 exceptions. You could argue that you were not competent
19 today. You could argue that your lawyer gave you
20 constitutionally ineffective advice. You could argue --
21 if the Supreme Court or the Court of Appeals comes down
22 with a new rule of law that applies retroactively to
23 people like you, you could invoke it, and if for some
24 reason I were to give you a higher sentence than called
25 for by the guidelines, your appeal and collateral review

1 rights will be preserved. But those are the only
2 exceptions. General rule will be no appeal, no
3 collateral review, if I accept your guilty plea. Do you
4 understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Has anyone threatened you in an
7 effort to try to get you to plead guilty?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: So we've had some discussions in
10 the past about maybe threats against family members or
11 girlfriend or common law wife, things like that. Has
12 anybody threatened you in that way to try to get you to
13 plead guilty to this particular plea agreement?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Okay. And let me ask counsel --
16 let me ask the government. So this is a formal plea
17 offer. At any point in these proceedings did you extend
18 a formal plea offer to the defendant other than this
19 one?

20 MR. ABRAMSON: Yes, your Honor.

21 THE COURT: Tell me about that.

22 MR. ABRAMSON: In July of this year, 2014, an
23 offer was extended. I believe it was 15 months. And
24 then in September of this year an offer was extended, a
25 formal offer, of 12 months and one day, and both of

1 those were declined leading to the trial and the
2 subsequent offer.

3 THE COURT: All right. Let me ask counsel.

4 To your knowledge is that correct that those were the
5 only two offers that were extended?

6 MR. VOGELMAN: Yes, your Honor. I don't know
7 what happened back when Mr. Saxe was there.

8 THE COURT: As far as you know, were those
9 offers, in fact, presented to the client and rejected?

10 MR. VOGELMAN: Correct, your Honor.

11 THE COURT: And do you agree that those offers
12 were presented and rejected?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right. Has anyone made any
15 other promises to you in an effort to try to get you to
16 plead guilty other than the ones that are in this
17 written plea agreement that we talked about?

18 THE DEFENDANT: No promises, just that no
19 charges would be brought forth on my wife.

20 THE COURT: So it's not a condition of this
21 plea agreement, but you have been told that they weren't
22 going to bring some charge against your wife? Is that
23 what you're telling me?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Does the government have any

1 current intention to bring charges against the wife in
2 connection with these matters?

3 MR. KACAVAS: No current intention, your
4 Honor.

5 THE COURT: All right. So it's not a quid pro
6 quo promise bargained for. It's just simply you
7 representing what the government's current intentions
8 are.

9 MR. KACAVAS: That's accurate.

10 THE COURT: All right. Are you satisfied with
11 the legal advice you've received from your attorney?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And, counsel, have you advised
14 your client concerning the admissibility of any
15 statements or other evidence the government has against
16 him?

17 MR. VOGELMAN: I have.

18 THE COURT: To your knowledge is he pleading
19 guilty because of any illegally obtained evidence in the
20 possession of the government?

21 MR. VOGELMAN: No, your Honor.

22 THE COURT: So let's address this issue of the
23 defendant's mental health problems, which he
24 acknowledges he suffers from. I have not found him to
25 be the type that would call his competency into

1 question, and I know you've had some difficulties over
2 the time in interacting with your client. But I want to
3 know sincerely as you sit here today, are you aware of
4 anything about the defendant's mental condition or his
5 interactions with you that you think would call into
6 question his ability to waive his constitutional rights
7 and make an important decision like the one he's making
8 today?

9 MR. VOGELMAN: Not at all, your Honor.

10 THE COURT: Okay. So, Mr. Irish, this is the
11 last chance you have to change your mind. Do you feel
12 you've had enough time to think about your decision?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And you still wish to plead guilty
15 to both charges.

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Okay. So I will take your guilty
18 plea now. Now, you've told me you've read those charges
19 and understand them so I won't read them to you again
20 unless you want me to. Do you want me to read them to
21 you again?

22 THE DEFENDANT: No, thank you, your Honor.

23 THE COURT: All right. As to the two
24 counts -- let's first take Count 1. As to Count 1
25 charging you with aiding and abetting the making of a

1 material false statement in connection with the
2 acquisition of a firearm, how do you plead to that
3 charge, guilty or not guilty?

4 THE DEFENDANT: Guilty, your Honor.

5 THE COURT: And as to Count 2 charging you
6 with making a material false statement to a federal
7 agent, how do you plead to that charge, guilty or not
8 guilty?

9 THE DEFENDANT: Guilty, your Honor.

10 THE COURT: Having questioned the defendant
11 and his counsel on the offered plea of guilty, the
12 defendant and his counsel having informed the Court that
13 they have conferred concerning the offered pleas of
14 guilty and all aspects of the charges against the
15 defendant and any defenses he may have, and the Court
16 having observed the defendant making his answers, his
17 demeanor and manner while answering questions, his
18 attitude and his apparent intelligence, and the Court
19 having observed that the defendant does not appear to be
20 under the influence of any medication, drug, or other
21 substance which could affect his judgment in any manner,
22 the Court finds that the plea of guilty of the defendant
23 is knowingly, voluntarily, and intelligently made with
24 full knowledge of the charges against him and the
25 consequences of his plea, and no threats or coercion

1 have been exerted upon him in any manner. Accordingly,
2 I accept the defendant's guilty plea. He's now adjudged
3 guilty of the offenses set forth in Counts 1 and 2. I
4 will defer acceptance of the plea agreement until the
5 time of sentencing.

6 So how much time has your client done already?

7 MR. VOGELMAN: Your Honor, he's done a little
8 over 13 months.

9 THE COURT: So we want to get the sentencing
10 in before the 18-month period; right?

11 MR. VOGELMAN: Right. So we have already
12 tentatively, subject to your approval, approved of a
13 date that would do that.

14 THE COURT: Is that the February 23rd?

15 MR. VOGELMAN: 23rd, yes.

16 THE COURT: Is the probation officer -- I
17 understand this may accelerate the schedule a little
18 bit. Are you confident you can get a report prepared by
19 then?

20 MS. GAUVIN: Yes, your Honor.

21 THE COURT: All right. We want to do that so
22 he doesn't spend any extra time in jail. I appreciate
23 the probation officer's cooperation on that.

24 So sentencing will take place on
25 February 23rd, 2015, at eleven a.m. The defendant is

1 currently in custody. I see no reason to change his
2 custody status.

3 Now, if we sentence in February, will he be
4 allowed to leave shortly thereafter or has he got a few
5 more months?

6 MR. VOGELMAN: No, I think that just about
7 does it, Judge. On an 18-month, he does 15.3 and
8 that -- the date was picked so that it's like a day
9 after, I think.

10 MR. KACAVAS: Your Honor, I think that's open
11 and I wouldn't want to make a representation on behalf
12 of the United States until I study that issue and the
13 timing of that issue. I don't necessarily agree with
14 Attorney Vogelman.

15 THE COURT: Okay. Here's what I want to be
16 sure about. If he's only going to be in custody for
17 another couple of weeks or something after the date, I
18 don't want him shipped off to the Bureau of Prisons.

19 MR. KACAVAS: I don't think that's going to
20 happen. Just based on his -- I think he stays.

21 THE COURT: I think the defendant would rather
22 stay where he is. Right?

23 MR. VOGELMAN: Yes.

24 THE COURT: We want to be sure that whenever
25 we do the sentencing, that there won't be any shipment

1 outside the state.

2 MR. KACAVAS: I don't believe --

3 THE COURT: I won't let that happen.

4 MR. IRISH: Excuse me, your Honor. I was left
5 under the impression that as of sentencing, on whatever
6 the sentencing date was, which is now the 23rd, that I
7 would be released upon that date. Now I'm understanding
8 differently.

9 THE COURT: I want to assure you this. I'm
10 going to make sure that you don't get shipped off
11 somewhere, okay? I can't tell you today the exact good
12 time calculation. What your lawyer has said is right,
13 as far as I know. But I can't tell you to the day. And
14 I understand your point, and if we need to move the
15 sentencing date a couple of days one way or the other, I
16 can do that, too. So we'll do everything we can to get
17 you out the day you are sentenced. That's the intention
18 of everybody, but it's an actual mathematical
19 calculation and the prosecutor is just saying to me he
20 hasn't done that.

21 Look, trust me on this one. I'm going to try
22 to make sure that you don't -- I'm going to make sure
23 that you're not going to be shipped out of the state.
24 I'm going to make sure that you're going to get the
25 18-month sentence that the parties want you to get,

1 unless something really crazy happens. You understand,
2 I'm not completely bound. I will have to see the
3 presentence report. But if there's nothing unusual in
4 the presentence report, I'm going to give you the
5 18-month sentence and I'm going to sentence you in a way
6 that ensures that you don't get shipped out of state and
7 that you get released, and if what the lawyers have said
8 is true as to how much time you've done in prison and
9 all that, you should be released the day of the
10 sentencing.

11 Nobody can absolutely guarantee that to you.
12 That wasn't a promise that was bargained for, but I'm
13 telling you, I hear you on this. I know what your
14 concerns are. I'm going to try to address them.

15 I'm sure your lawyer has explained this to
16 you. You're going to get an 18-month sentence. Under
17 the Bureau of Prisons regulations, assuming you've been
18 of good behavior, you're entitled to a certain number of
19 days credit. The probation officer will remind me how
20 many.

21 MS. GARVIN: It's about 87 percent.

22 THE COURT: Yeah. I don't have the exact
23 number of days in my mind. Do you know?

24 MR. VOGELMAN: I thought it was closer to 85.
25 I calculated this at 85 just to make sure.

1 THE COURT: Okay. Basically you get a credit.
2 So you only serve -- the exact number none of us have in
3 mind today, but it's 80, 85 percent of that sentence is
4 what you will actually serve, and you'd get credit for
5 all the time that you've been in custody on this charge.
6 So you just count those number of days, and if what your
7 lawyer has said is true, that should be the date about
8 which you're going to be released. Okay?

9 So I hear you on this. I'm not going to let
10 you -- the thing I don't want you to do is I don't want
11 you to get in the Bureau of Prisons system. I want you
12 to be sentenced here, finish your 18-month sentence here
13 and be released. That's what the parties want you to
14 do. That's fine with me. Okay?

15 All right. So we'll do the sentencing on
16 February 23rd at eleven a.m. If there's some adjustment
17 that's necessary, the parties can request a status
18 conference with the Court and we will adjust the
19 sentencing date, if necessary.

20 MR. VOGELMAN: That's fine, Judge.

21 THE COURT: But I want to be very clear. I
22 don't want the defendant being shipped out. I'm not
23 going to let that happen.

24 All right. The defendant shall remain in
25 custody pending sentencing. Is there anything else we

1 need to deal with today?

2 MR. KACAVAS: No, your Honor.

3 MR. VOGELMAN: No, Judge.

4 THE COURT: I'm going to go back and dismiss
5 the jury then.

6 (Adjourned at 12:45 p.m.)

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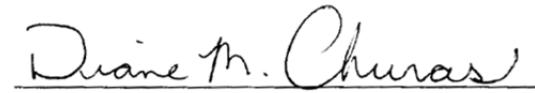
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1 C E R T I F I C A T E
23 I, Diane M. Churas, do hereby certify that the
4 foregoing transcript is a true and accurate
5 transcription of the within proceedings, to the best of
6 my knowledge, skill, ability and belief.7 Submitted: 5/28/15
8**DIANE M. CHURAS, LCR, RPR, CRR**

LICENSED COURT REPORTER, NO. 16

STATE OF NEW HAMPSHIRE

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